IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL REVISION APPLICATION NO.564 OF 2007

Shri Kisan Vanaji Satpute
Aged about 77 years, Occ:Nil,
Residing at 1181, Budhwar Peth,
Pune 411 002. ..Applicant.

v.

Shri Baburao Jakhuji Wakankar
(Since deceased, through his legal heirs)

1. Pandharinath Baburao Wakankar
   Aged about 54 years, Occ: Business.

2. Vithal Baburao Wakankar
   Aged about 52 years, Occ: Business.
   residing at 1181, Budhwar Peth,
   Pune 411 002. ..Respondents.

WITH
CIVIL REVISION APPLICATION NO.565 OF 2007

1. Sanjay Dhondiba Dahibhate
   Aged about 39 years, Occ:Business.

2. Smt. Phulabai Dhondiba Dahibhate
   Aged about 64 years, Occ:Business.

3. Arun Dhondiba Dahibhate
   Aged about 42 years, Occ: Business.

All Nos.1 to 3 residing at 1181,
Budhwar Peth, Pune 411 002.

V/s.

Shri Baburao Jakhuji Wakankar
(Since deceased, through his legal heirs)

1. Pandharinath Baburao Wakankar
   Aged about 54 years, Occ: Business.

2. Vithal Baburao Wakankar
   Aged about 52 years, Occ: Business.
   residing at 1181, Budhwar Peth,
   Pune 411 002. ..Respondents.

WITH
CIVIL REVISION APPLICATION NO.573 OF 2007

1. Mr. Kundalik Sakharam Dahibhate
   Age: 43 yrs., Occ: Service,

2. Mr.Ashok Sakharam Dahibhate
   Age: 46 yrs., Occ: Service,
   Both R/at: 1181, Budhwar Peth,
   Pune- 411 002. ... Applicants.

V/s.

Shri Baburao Jakhuji Wakankar
(Since deceased, through his legal heirs)

1. Pandharinath Baburao Wakankar
   Aged about 54 years, Occ: Business.

2. Vithal Baburao Wakankar
   Aged about 52 years, Occ: Business.
   residing at 1181, Budhwar Peth,
   Pune 411 002. ..Respondents.

WITH
CIVIL REVISION APPLICATION NO.574 OF 2007

Mr. Baban Laxman Bhaigude
Age: 52 yrs., Occ: Service,
R/at: 1181, Budhwar Peth,
Pune 411 002. ..Applicant.

V/s.

Shri Baburao Jakhuji Wakankar
(Since deceased, through his legal heirs)

1. Pandharinath Baburao Wakankar
   Aged about 54 years, Occ: Business.

2. Vithal Baburao Wakankar
   Aged about 52 years, Occ: Business.
   residing at 1181, Budhwar Peth,
   Pune 411 002. ..Respondents.

Mr.Madhav Jamdar, adv. for the Applicants.

Mr.G.S.Godbole with Mr.Nitin Muley, advs. for the

Respondents.

CORAM: J.H.BHATIA,J.
DATE: 13th December,2007.

ORAL JUDGMENT:

1. All these four revision applications may be disposed off by the common judgment as they arise out of the judgment passed by the Courts below in the suits filed by the same landlord for eviction against the tenants on the ground that he wants to demolish the whole building and to reconstruct the same.

2. Revision applicants are the original defendants/ tenants while the respondents are the legal heirs of the original landlord Baburao Jakhuji Wakankar. The said Baburao had two sons namely, Pandharinath and Vithal. The suit premises are situated at City Survey No.1181 and they admeasure about 601.2 sq.mtrs. Property is situated at Budhwar Peth, Pune. The landlord Baburao had executed power of attorney in favour of his two sons and the suits came to be filed by him through his sons for eviction against the eleven tenants under the provisions of Section 16 of the Maharashtra Rent Control Act, 1999. It is the contention of the landlord that each of the tenants was occupying a single room admeasuring 100 sq.ft. with potmala (attic) under the

slanting roof. According to the landlord, potmala was used as a store room and had a approach by the ladder. Tenants have been residing in the same premises for the last about 50 or 60 years or even more. The landlord prepared a plan to demolish the building and to reconstruct the same. Some part of the building has to be used for commercial purpose and 1250 sq.ft. construction has to be made available to accommodate the tenants. Accordingly, he prepared a plan and got it sanctioned. According to the plaintiff, he has already an amount of Rs.6 lakhs in account of the members of his family and there was an assurance by co-operative bank to provide loan of Rs.50 lakh for this project. Cost of the construction of 1250 sq.ft., where the tenants have to be accommodated after reconstruction, is about Rs.11,62,000/-. For the remaining construction, cost is estimated at Rs.33,40,000/-. Plaintiffs assured to provide accommodation of 120 sq.ft. to each of the tenants. He also gave statutory undertaking with time bound programme for demolition of the old building and construction of new one.

3. Even though the suits were tried and disposed off separately, plea of each of the tenants was almost identical. Each of the tenants admitted that he was in possession of the room having potmala (attic). However, they denied the area of suit premises being 100 sq.ft. in each case. They also denied that potmala or the

attic was used only for the store room and not for the residence. They also denied that all the tenants can be accommodated in 1250 sq.ft. area and also that the expenditure for construction of new building is Rs.11,62,000/-. They also denied financial capacity of the landlord to undertake and construct the project within the stipulated period. It is contended by them that even as per the statement of the plaintiff himself, he does not have sufficient funds to undertake a project. Each of them contended that in case new premises is constructed, he should get carpet area of atleast 250 sq.ft.

4. After hearing the parties, the learned trial Court decreed the suits for eviction and the defendants were directed to deliver the possession of the suit property within three months from the date of decree and the plaintiff was directed to comply with essential terms and conditions as per the provisions of Section 16(6) of the Maharashtra Rent Control Act strictly. The tenants/defendants preferred appeals against the said judgments. The appeals also came to be dismissed. Hence, the tenants have preferred the present revision applications.

5. Heard the learned counsel at length. The learned counsel have taken me through the oral and documentary evidence and the relevant provisions of law.

At the outset, it may be stated that even though each of the tenants claims that the carpet area in his occupation was more than 100 sq.ft. as pleaded by the landlord, the Courts below gave concurrent finding that the carpet area in possession of each of the tenants is only 100 sq.ft. and not more than that. The oral evidence was led on behalf of the landlord to show that the carpet area of each of the tenants was 100 sq.ft. and within the rooms there are potmalas or attics having slanting roofs over them. There are no stair-cases for approach to the said potmalas but the tenants had arranged for the ladders to approach them. Even though the tenants claimed different carpet areas at different times, in the cross-examination they appeared to have been admitted that the actual carpet area was 100 sq.ft but there were potmalas of almost equal size in each of the rooms. As the roof was slanting at the centre of the potmala, maximum height was about 4-5 feets in the centre while at two ends, it was only two feet. In view of this the Courts below came to conclusion that it is impossible to believe that the potmala is used for the purpose of residence but it must have been used only for storage of articles. Taking into consideration the evidence on record and the concurrent findings of both the Courts below, I see no reason to interfere in these findings.

6. Both the Courts below also gave concurrent

findings that the building is very old and in his wisdom the landlord felt that it can be demolished and reconstructed. He also assured to accommodate the tenants in the building to be constructed now. Therefore, it was found that the plaintiffs' requirement for the suit property for demolition of old building and for the reconstruction of new building is reasonable and bonafide.

7. The learned counsel for the tenants/defendants mainly harped on the conditions in Section 16(6) of the Maharashtra Rent Control Act, which are required to be complied with by the landlord strictly. The learned counsel contended that as per the condition (a), no decree for eviction shall be passed unless the Court is satisfied that the necessary funds for the purpose of the erection of new building are available with the landlord. The Courts below have noted that as per the oral evidence on record, two sons and other family members of the plaintiff had actually an amount of Rs.6 lakh in their bank accounts when the suit was filed. Besides that the Yogiraj Sahakari Patsanstha had given letters Exhibits 45 and 46 that the society had decided to give financial assistance of Rs.25 lakh to each of the plaintiffs namely, Pandharinath and Vithal, who are the two sons of the original landlord. It shows that besides cash of Rs.6 lakh with them, the plaintiffs had

assurance of financial assistance of Rs.50 lakh from the co-operative society. As per the estimate submitted by the plaintiff, cost of construction of tenements for the tenants admeasuring 1250 sq.ft. will be Rs.11,50,000/- and for remaining construction cost is Rs.33 lakhs. Taking into consideration the estimated cost, the plaintiffs have made sufficient arrangement for meeting the cost of construction. The learned counsel for the tenants vehemently contended that as per the clause (a) of sub-section 6, the funds should be actually available with the landlord. I am unable to accept this contention. The words "necessary funds are available" only mean that the landlord should be in a position to arrange funds for the purpose of demolition of old structure and construction of new building as per the plan within stipulated period of fifteen months. It is not necessary that all the funds should be available with landlord in hard cash and he should be in a position to show that amount to the Court at the time of trial. Nowadays large projects for construction of buildings as well as industries are taken up with assurance of financial aid or assistance from the financial institutions or banks. Therefore, I find no substance in this contention of the learned counsel for the tenants.

8. Clause (b) of Sub-section 6 requires the landlord to give the plans and estimates of the new

building, which should have been properly prepared. In the present case, according to the landlord, plan was prepared by the architect, who was examined as witness and the plan has also been sanctioned by the Pune Municipal Council.

9. As per Clause (c), decree for eviction can not be passed unless the Court is satisfied that the new building or the new floor or floors to be erected by the landlord shall contain residential tenements not less than the number of existing tenements, which are sought to be demolished. In the present case, there are in all eleven tenants, who were occupying the premises in the old building. It appears that the plaintiff has already settled the matter with some of the tenants and the disputes are pending only with the seven tenants. Four of them are before this Court. As per the plan prepared by the plaintiff, each tenant will be provided a tenement of 120 sq.ft. As he has prepared plan for construction of tenements with carpet area of 1250 sq.ft. with sufficient number of tenements. Therefore, this requirement of clause (c) is also satisfied.

10. Clause (d) requires the landlord to give undertaking.

(i) that the plans and estimates for the new

building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five percent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent "in writing" of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to given such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded, extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

11. Undertaking has been filed before the trial Court as required by Clause (d). The learned counsel for the tenants/respondents vehemently contended that

even though sub-clause (i) of clause (d) requires that each tenant should be provided with carpet area in the new building equivalent to the area of the premises in his occupation in the building sought to be demolished, the Development Control Rules for Pune Municipal Corporation requires that no tenement shall be less than 15 sq.mtr. For this he placed reliance upon Rule N-2.1.2, which provides that in the redevelopment scheme of a property in congested area, the size of the tenements in redevelopment scheme should not be smaller than 15 sq.m. and larger than 55 sq.m. in area. He also pointed out that as per rule 17.2, floor area of the habitable room shall not be less than 9.5 sq.mtr. and the area of the kitchen shall not be less than 5.5 sq.mtr. Thus, tenement consisting of a room and kitchen can not be less than 15 sq.mtrs. and, therefore, if separate kitchen is not constructed, the tenement has to be essentially not less than 15 sq.mtrs. It may be noted that initially, Mr.Godbole, the learned counsel for the landlord tried to contend as per the rule N-2.1.5 the Commissioner in Special circumstances may relax these rules. He also referred to rules 6.6.2.2, which provides that in specific cases where a clearly demonstrable hardship is caused, the Commissioner may by special written permission permit any of the dimensions/ provisions prescribed by these rules to be modified provided the relaxation sought does not violate the health safety, fire safety, structural safety and public

safety of the inhabitants, the buildings and the neighbourhood. Taking help of these provisions Mr.Godbole contended that the Commissioner can relax condition of having minimum floor area of the tenement at 15 sq.mtr. but after some discussion he conceded that no such written permission has been granted nor the Commissioner has relaxed these conditions.

12. Section 16(6) of the Maharashtra Rent Act provides that the tenant shall be provided with tenement the carpet area of which shall not be less than carpet area already occupied by him in the building to be demolished. If that rule is to be followed, the landlord is bound to provide the tenement having 100 sq.ft to each of the tenants. Ofcourse such tenements may also have potmalas or attics as in the existing structure they were. Mr.Godbole also pointed out that in the cross-examination of the defendants/tenants, such an offer was made to the tenants that they could have similar potmalas in the new tenements but that was not accepted by the tenants. It is not necessary to consider that aspect here. However, as per the Development Control Rules as pointed out above, floor area of the tenement shall not be less than 15 sq.mtr. Thus, to comply with the mandatory requirements of Section 16(6) of the Maharashtra Rent Control Act, minimum carpet area of the 100 sq.ft. has to be provided to the tenant but that provision does not say

that carpet area can not be more than carpet area, which was already in occupation of the tenant in the building to be demolished. Therefore, in the new tenement, carpet area may not be less but may be more than the carpet area, the tenant was having in the old building. As per the Development Control Rules, tenement can not be less than 15 sq.mtr. As such, to make the new construction as per the Development Control Rules, the landlord has to make construction of tenements, which are not less than 15 sq.mtrs. Without complying with the provisions of Development Control Rules, the landlord can not claim to have prepared proper plan as per the rules. In view of this even though each of the tenants is occupying 100 sq.ft. carpet area in the building to be demolished, landlord will have to provide tenement in the new building not less than 15 sq.mtrs. If the provisions of Section 16(6) of the Rent Act and Development Control Rules are to be harmoniously read, in the light of the facts of the present case, plaintiff is bound to provide tenement of not less than 15 sq.mtr. in the new construction. After some discussion about legal provisions, Pandharinath, who is the respondent no.2 and one of the original plaintiffs has filed additional affidavit/undertaking in each of the four revision applications wherein he has stated that the landlord would give each of the tenants carpet area admeasuring 15 sq.mtr. in the new building to be constructed on a plot of land bearing City Survey

No.1181 situated at Budhwar Peth, Pune i.e., the site of the existing structure. He has also given undertaking not to execute the decree passed by the trial Court till one month after the revised building plan is sanctioned by the Pune Municipal Corporation. Thus, the plaintiff/landlord has given undertaking before this Court to comply with the provisions of Development Control Rules and to provide tenements having carpet area admeasuring of 15 sq.mtrs. in new building to each of the tenants. Thus, provisions of Section 16(6)(d)(i) as well as relevant Development Control Rules will be fully complied.

13. The learned counsel for the tenants/applicants vehemently contended that in view of sub-clause (iii) of Section 16(6)(d) of the Rent Act, if in the new building there is more than carpet area specified in sub-clause (i), that is, the carpet area actually occupied by the tenants in the existing building, the landlord shall obtain consent in writing of the tenants or tenants concerned to accept the premises with larger area. According to him, in view of this provision, it is incumbent upon the landlord to offer additional carpet area to the tenants and only on their refusal to accept the larger area, the excess area may be utilised for anyother permissible purpose by the landlord. According to him, the tenants expect 300 sq.ft. carpet area but that claim has not been accepted by the landlord. On

the other hand Mr.Godbole, learned counsel for the landlord contends that the sub-clause (iii) will be applicable if the floor area of individual tenement is larger than the area of tenement in occupation of the concerned tenant in old building and this has no reference to the total carpet area of the building.

14. In support of the contention that the provisions of Section 16(6)(d)(iii) are clear to support the claim of the tenants over the excess carpet area, the learned counsel for tenants placed reliance on following observations of the Supreme Court in paragraph 13 in **Nathi Devi v. Radha Devi Gupta (2005) 2 Supreme Court Cases 271.**

> "13. The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it wouldnot be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular

> context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional."

There can be no dispute about the principles about the interpretation laid down by the Supreme Court in the above observations. However, in my opinion, the learned counsel for the applicants/tenants is trying to put unnecessary and unreasonable interpretation on the said clause. After going through the record, I find that the tenants have no legal right to claim 300 sq.ft. carpet area in the new construction. If the interpretation made by the learned counsel is accepted, it may result in absurd, unreasonable and illogical consequences. The result of such interpretation would be that if landlord undertakes to demolish the old building and construct a new building, whatever extra carpet area may be available in the new building that will have to be offered only to the tenants of the existing building. In that case, the landlord will have no space available in new building, which could be used by him either for his own use or for commercial purposes or for letting out to new tenants or for dispossessing of the certain parts of the building. No landlord would be interested in investing huge amount in demolition of old building and in construction of new building only for the benefit of existing tenants. If such interpretation is made, the landlords would never undertake any project of demolition of old building and reconstruction because

nobody can be expected to spend huge finances only for the benefit of others or for charity. Mr.Godbole contended that it may be possible that as per the plan, which may be prepared by the landlord particularly the tenement may be having more carpet area than what the tenants were occupying in the existing building. In such case, the landlord has to first offer that excess carpet area in the particular tenement to the tenant and if he refuses to accept then only he can make use of that excess floor area to any permissible use. In my considered opinion, it appears to be logical and reasonable.

15. It is necessary to find out the objects and purpose in the re-enactment of Rent Control Act. Preamble of the Maharashtra Rent Control Act, 1999 reads as follows:

> "WHEREAS it is expedient to unify, consolidate and amend the laws prevailing in the different parts of the State relating to the control of rents and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return and to provide for the matters connected with the purposes aforesaid; It is hereby enacted in the Fiftieth Year of the Republic of India as follows:-"

From this preamble it becomes clear that one of the important purposes of re-enactment of Rent Control Act was to encourage the construction of new houses by

assuring fair returns to the landlord . If the whole excess carpet area, which is available in the new building has to be offered to the existing tenants only, the landlord can never expect fair returns for the investment, which he makes and that can not encourage construction of new houses. Taking into consideration the purpose of the re-enactment of the Rent Control Act and the purpose in providing for ejectment of tenants from the existing old building for the purpose of demolition and for reconstruction, it must be held that while the legislature wanted to provide protection to the legal and legitimate rights of the tenants, the legislature also wanted to encourage the landlords to undertake the construction of new houses so that they may expect fair returns on the investment and at the same time more tenements may be available to meet the growing demand. In view of this, I am unable to accept the contention of the learned counsel for the respondents in respect of Section 16(6)(d)(iii) of the Rent Act.

16. Taking into consideration all the facts and circumstances and the legal position and the undertaking given by the plaintiffs before this Court that they would give each of the tenants the carpet area admeasuring 15 sq.mtrs. in the new building, in compliance with the relevant Development Control Rules, I find that there is no substance in the revision

applications and they are liable to be dismissed.

17. Revision Applications are dismissed subject to the additional affidavit/undertaking filed by the plaintiff Pandharinath before this Court. Decree passed by the trial Court shall be subject to the said undertaking.

(J.H.BHATIA,J.)